

PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

PACE UNIVERSITY SCHOOL OF LAW

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SUPERVISING ATTORNEYS

KARL S. COPLAN

DANIEL E. ESTRIN

ROBERT F. KENNEDY, JR.

ADMINISTRATOR

JENNIFER RUHLE

December 3, 2015

Via Certified Mail (Return Receipt Requested)

Mr. Daryl Legg
Supervisor
Town of Hunter
P.O. Box 70
Tannersville, New York 12485

**Re: 60-Day Notice of Intent to Sue for Violations of the Clean Water Act
State Pollutant Discharge Elimination System Permit No. NY-0103187**

Dear Supervisor Legg:

This letter serves as a 60-day notice on behalf of Riverkeeper, Inc. ("Riverkeeper"), of its intent to sue the Town of Hunter ("Hunter") under Section 505 of the Clean Water Act (the "Clean Water Act" or "Act"), 33 U.S.C. § 1365, for ongoing and imminent violations of the Act, 33 U.S.C. §§ 1251-1387, resulting from the operation of the Hunter Landfill Leachate facility located on Hylan Road, Tannersville, NY 12485. This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the Clean Water Act, to the extent such notice is deemed necessary by a court. *See* 33 U.S.C. § 1365(a).

Congress passed the Clean Water Act in 1972 "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To implement this goal, Section 301 of the Clean Water Act, 33 U.S.C. § 1311, makes it unlawful for any person to discharge any pollutant from a point source into waters of the United States, except in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act. 33 U.S.C. § 1342.

Although the Act, which remains a cornerstone of surface water quality protection in the United States, has significantly improved the number of waterways that are fishable and swimmable, many water quality goals remain unmet. Section 505(a)(1) of the Act provides that

reports covering the periods from May 1, 2010 through July 31, 2015 show discharges of Ammonia ("NH₃"), Biochemical Oxygen Demand, Cadmium, Copper, Dissolved Oxygen, Flow, Iron, Lead, Manganese, Total Suspended Solids ("TSS"), and Zinc in excess of the volumes or concentrations authorized by the Permit. A list of identified Permit violations is appended to this notice letter.

The Facility's reports of noncompliance events and discharge monitoring reports dated prior to May 1, 2010 have not yet been made available to Riverkeeper. However, based on information and belief, Riverkeeper asserts that the conditions at the Facility that have caused chronic noncompliance with the Permit existed prior to, throughout, and subsequent to the time period covered by the available records. Therefore, Riverkeeper hereby places Hunter on notice of its intent to sue the Town for each of the Facility's Clean Water Act violations dated from December 1, 2009 until the date of Riverkeeper's suit, when filed. Such additional violations may be revealed during the discovery process.

C. Person Giving Notice

This notice of intent to sue is issued on behalf of Riverkeeper. Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. For more than 44 years, Riverkeeper has stopped polluters, championed public access to the river, influenced land use decisions, and restored habitat, benefiting the natural and human communities of the Hudson River and its watershed. Riverkeeper's members' use and enjoyment of the Schoharie Creek and the Schoharie Reservoir has been diminished by Hunter's violations of the Clean Water Act, and the unfiltered drinking water supply consumed by Riverkeeper members has been polluted. Riverkeeper intends to sue on behalf of itself and its members. Riverkeeper hopes that such litigation will not be necessary, and wishes to work with Hunter to bring the Facility into compliance with the Clean Water Act as soon as possible to protect the designated uses of the affected waterbodies and downstream drinking water sources.

The name, address and phone number of persons giving notice:

Riverkeeper, Inc.
20 Secor Road
Ossining, New York 10562
Phone: (800) 217-4837

D. Relief Sought by Plaintiff

Riverkeeper intends to seek declaratory and injunctive relief and civil penalties against Hunter. Under the Clean Water Act, 33 U.S.C. § 1319(d), the current maximum penalty per day for each violation is \$37,500, *see* 40 C.F.R. § 19.4, and a court may require Hunter to pay Riverkeeper's reasonable attorneys' fees and costs if Riverkeeper is found to be a prevailing party in any such litigation. 33 U.S.C. § 1365(d).

Notice of Intent to Sue for Violations of the Clean Water Act
Mr. Daryl Legg, Supervisor, Town of Hunter, New York
December 3, 2015
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Judith A. Enck, Regional Administrator
U.S. E.P.A. Region 2 Office
290 Broadway
New York, NY 10007-1866

Loretta E. Lynch, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Basil Seggos, Acting Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

APPENDIX

Table of Identified Violations

Appendix: Table of Identified Violations

| Effluent | Date (Mo/Yr) | Permit Allowance | Sample Measurement | Days in Violation* |
|---|--------------|--|---|--------------------|
| Ammonia (NH3) (Daily Maximum) | 12/10 | 1.5 mg/L (Summer) 2.2 mg/L (Winter) | 3 mg/L | 30 |
| | 1/11 | | 3.8 mg/L | 30 |
| | 2/11 | | 3.6 mg/L | 28 |
| | 3/11 | | 2.4 mg/L | 15 |
| | 7/11 | | 1.8 mg/L | 14 |
| | 8/11 | | 12.4 mg/L | 14 |
| | 9/11 | | 7.3 mg/L | 14 |
| | 10/11 | | 2.2 mg/L | 30 |
| | 11/11 | | 3.2 mg/L | 30 |
| | 12/11 | | 3.0 mg/L | 30 |
| | 1/12 | | 3.4 mg/L | 30 |
| | 2/12 | | 4.2 mg/L | 30 |
| | 3/12 | | 5 mg/L | 30 |
| | 4/12 | | 3.8 mg/L | 14 |
| | 5/12 | | 2.9 mg/L | 14 |
| | 4/13 | | 2.9 mg/L | 14 |
| | 5/13 | | 1.8 mg/L | 14 |
| Biological Oxygen Demand (BOD5) (Daily Maximum) | 5/11 | 5.0 mg/L | 9 mg/L | 15 |
| | 6/11 | | 10 mg/L | 30 |
| | 7/11 | | 7.4 mg/L | 14 |
| | 5/12 | | 7 mg/L | 14 |
| | 10/13 | | 24 mg/L | 14 |
| Cadmium (Daily Maximum) | 4/11 | 1.6 ug/l | 3.0 ug/L | 30 |
| | 10/14 | | 2 ug/L | 14 |
| Copper (Daily Maximum) | 7/10 | 6.4 ug/L | 9 ug/L | 30 |
| | 2/11 | | 9 ug/L | 14 |
| | 4/11 | | 7 ug/L | 15 |
| | 5/11 | | 16 ug/L | 15 |
| | 10/11 | | 8.0 ug/L | 15 |
| | 2/12 | | 10 ug/L | 30 |
| | 3/12 | | 21 ug/L | 30 |
| | 4/12 | | 7 ug/L | 14 |
| | 9/12 | | 27 ug/L | 14 |
| | 10/12 | | 16 ug/L | 14 |
| | 4/13 | | 7 ug/L | 14 |
| | 5/13 | | 7 ug/L | 28 |
| | 6/13 | | 9 ug/L | 14 |
| | 9/13 | | 7 ug/L | 14 |
| | 5/14 | | 9 ug/L | 14 |
| | 9/14 | | See 9/22/14 Report of Noncompliance Event | 14 |
| | 11/14 | | 10 ug/L | 14 |
| Disolved Oxygen (Minimum) | 10/11 | 7.0 mg/L | 3.8 mg/L | 30 |
| | 9/12 | | 6.9 mg/L | 14 |
| | 6/14 | | 6.4 mg/L | 14 |
| Flow (Daily Maximum) | 5/10 | 12,500 Gallons/Day | 23,579 Gallons/Day | 1 |
| | 8/10 | | 32,856 Gallons/Day | 4 |
| | 10/10 | | 90,104 Gallons/Day | 28 |
| | 11/10 | | 167,590 Gallons/Day | 1 |
| | 1/11 | | 13,022 Gallons/Day | 1 |

Appendix: Table of Identified Violations

| Effluent | Date (Mo/Yr) | Permit Allowance | Sample Measurement | Days in Violation* |
|---|--------------|------------------|--|--------------------|
| Flow (Monthly Average) (Continued) | 8/11 | Monitor | 25,979 Gallons/Day | 30** |
| | 10/11 | | 41,673 Gallons/Day | 30** |
| | 11/11 | | 31,279 Gallons/Day | 29** |
| | 12/11 | | 27,713 Gallons/Day | 30** |
| | 1/12 | | 17,468 Gallons/Day | 30** |
| | 4/12 | | 12,710 Gallons/Day | 29** |
| | 10/12 | | 25,246 Gallons/Day | 30** |
| | 12/12 | | 14,083 Gallons/Day | 30** |
| | 1/13 | | 18,314 Gallons/Day | 30** |
| | 4/13 | | 24,592 Gallons/Day | 29** |
| | 5/13 | | 13,591 Gallons/Day | 30** |
| | 6/13 | | 24,747 Gallons/Day | 29** |
| | 12/13 | | 23,690 Gallons/Day | 30** |
| | 1/14 | | 20,951 Gallons/Day | 30** |
| | 3/14 | | 24,805 Gallons/Day | 30** |
| | 4/14 | | 27,800 Gallons/Day | 29** |
| | 5/14 | | 17,838 Gallons/Day | 30** |
| | 6/14 | | 14,764 Gallons/Day | 29** |
| | 10/14 | | 12,877 Gallons/Day | 30** |
| | 12/14 | | 33,386 Gallons/Day | 30** |
| | 4/15 | | 23,266 Gallons/Day | 29** |
| Iron (Daily Maximum) | 8/10 | 1000 ug/L | 28,500 ug/L | 14 |
| | 9/10 | | 1670 ug/L | 30 |
| | 11/10 | | 1003 ug/L | 15 |
| | 10/11 | | 1480 ug/L | 14 |
| | 11/11 | | 1410 ug/L | 30 |
| | 2/12 | | 2840 ug/L | 15 |
| | 5/12 | | 1340 ug/L | 14 |
| | 7/12 | | 2140 ug/L | 14 |
| Lead (Daily Max) | 6/10 | 3 ug/L | 44 ug/L | 30 |
| | 11/11 | | 4 ug/L | 30 |
| | 2/12 | | See 2/2012 Report of Noncompliance Event | 30 |
| | 12/13 | | 6 ug/L | 30 |
| Manganese (Daily Maximum) | 5/10 | 2000 ug/L | 3830 ug/L | 30 |
| | 6/10 | | 5280 ug/L | 30 |
| | 7/10 | | 2780 ug/L | 14 |
| | 8/10 | | 2003 ug/L | 14 |
| | 9/10 | | 4910 ug/L | 30 |
| | 10/10 | | 5110 ug/L | 30 |
| | 11/10 | | 4880 ug/L | 30 |
| | 12/10 | | 3000 ug/L | 30 |
| | 1/11 | | 3090 ug/L | 30 |
| | 2/11 | | 2940 ug/L | 28 |
| | 3/11 | | 2300 ug/L | 31 |
| | 4/11 | | 2750 ug/L | 30 |
| | 5/11 | | 2360 ug/L | 15 |
| | 6/11 | | 3006 ug/L | 30 |
| | 8/11 | | 2340 ug/L | 14 |
| | 9/11 | | 2630 ug/L | 30 |